

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION**

KIRK RAAB,	)	
	)	
Plaintiff,	)	Case No.: 08 C 50087
	)	
	)	
v.	)	Judge Reinhard
	)	
COUNTY OF JO DAVIESS, et. al.,	)	Magistrate Mahoney
	)	
Defendants.	)	

**MOTION TO DISMISS**

Defendants, County of Jo Daviess, Jo Daviess County Sheriff's Office, Sheriff Leo Hefel, Chief Deputy Colin Fulrath, and Donald Schweihs, by their attorneys, Julie A. Bruch and O'Halloran Kosoff Geitner & Cook, LLC, pursuant to Fed.R.Civ.P. 12(b)(6) move to dismiss plaintiff's complaint. In support of this motion, defendants state as follows:

1. Raab filed a five count complaint against defendants alleging both federal and state law causes of action. (Doc. 1).
2. Defendants now move to dismiss Counts II-V and defendants County of Jo Daviess, Jo Daviess County Sheriff's Office and Donald Schweihs move to dismiss all claims against them. Defendant Sheriff Hefel and Chief Deputy Fulrath have filed an answer and affirmative defenses to Count I only.
3. Jo Daviess County Sheriff's Office is not a properly legal entity.

4. The claims against Chief Deputy Fulrath and Public Defender Schweih in their official capacity are duplicative of the claims against Sheriff Hefel and Jo Daviess County.

5. County of Jo Daviess is a necessary party by virtue of *Carver v. LaSalle County*, 324 F.3d 947, 948 (7<sup>th</sup> Cir. 2003), but cannot be held liable for the actions of the sheriff, chief deputy, or any other employee of the sheriff's office.

6. Public defender Schweih should be dismissed from the case because Schweih is not Raab's employer and there are no allegations sufficient to demonstrate that Schweih acted under color of state law or deprived Raab of a federal right; Schweih statements are absolutely privileged under the First Amendment; and Raab's claims against Schweih are untimely.

7. Count II should be dismissed because Raab cannot state a claim for deprivation of equal protection under the law based on *Engquist v. Oregon Dept of Agriculture*, No. 07-474, \_\_\_, U.S. \_\_\_, 170 L.Ed. 975, 2008 U.S. LEXIS 4705 (June 9, 2008).

8. Count III should be dismissed because Raab cannot state a claim for a violation of substantive due process because any property interests that Raab possesses are not protected.

9. Count IV should be dismissed because Raab cannot state a claim for false light invasion of privacy because the allegations taken within the relevant statute of limitations are not actionable; defendants' statements were absolutely privileged; and defendants are immune from liability pursuant to Sections 2-201 and 2-109 of the Tort Immunity Act. 745 ILCS 10/2-201 and 2-109.

10. Count V should be dismissed because Raab has not set forth a claim for intentional infliction of emotional distress. The conduct by defendants that is not barred by the statute of limitations does not rise to the level of extreme and outrageous conduct that no reasonable man could be expected to endure it.

11. Defendants have filed a separate memorandum of law in support of this motion.

WHEREFORE, defendants, County of Jo Daviess, Jo Daviess County Sheriff's Office, Sheriff Leo Hefel, Chief Deputy Colin Fulrath, and Donald Schweih, respectfully request that this Honorable Court dismiss the complaint of plaintiff Kirk Raab as set forth above with prejudice and with costs in favor of defendants.

COUNTY OF JO DAVIESS, JO DAVIESS  
COUNTY SHERIFF'S OFFICE, SHERIFF LEO  
HEFEL, CHIEF DEPUTY COLIN FULRATH,  
DONALD SCHWEIHS

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	)	
Defendants.	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on July 3, 2008, I electronically filed defendants' Motion to Dismiss with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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